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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 2315 of 2005
Date of decision: 6.12.2007

Satpal and others **...Appellants**

Versus

Smt. Suman and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. P.N. Aggarwal, Advocate for the appellants.

Mr. Harsh Aggarwal, Advocate for respondents No. 1 to 3.

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RAJESH BINDAL, J.

The defendants are in second appeal before this Court against concurrent findings of fact by both the Courts below whereby suit filed by respondents No. 1 to 3/plaintiffs for declaration and permanent injunction was decreed.

The claim made in the suit was that respondents No. 1 to 3/plaintiffs are owners in possession of the shop in dispute and restrain was sought against the appellants/defendants from alienating the same. It was pleaded that Draupdi Devi was the owner of the property in dispute and there were certain other family properties owned by brothers, which were partitioned between the brothers by way of a deed dated September 21, 1981. In terms of the deed, Rajpal appellant no.3 got an area of 20 fts. X 60 fts., the possession of which was delivered to him. The ownership of this plot was to be transferred by Satpal and Kewal Krishan in his name. Satpal and Kewal Krishan got ½ share each in shop measuring 12-1/2 fts. X 60 fts., which was owned by Draupdi Devi. Jas Raj was given a plot of 15 fts. X 100 fts., which was to be transferred in his name by Satpal. The document executed was duly singed by the brothers namely, Jas Raj, Rajpal, Kewal Krishan and Satpal alongwith their parents namely Siri Ram and Draupdi

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Devi.

It is further pleaded that on April 21, 1986 an understanding was reached whereby Satpal surrendered his share in the shop in favour of Kewal Krishan and got compensation therefor. This document is duly signed by Satpal and Kewal Krishan. Respondents/plaintiffs in the present case are widow and children of deceased Kewal Krishan, who died on August 13, 1998. They were forced to file the suit for the reasons that immediately after death of Kewal Krishan, they were harassed. The suit was contested by the appellants/defendants raising various technical pleas including that documents in question i.e. partition deed and the agreement entered into between Kewal Krishan and Satpal were not registered and accordingly these do not confer any right on the parties and further that document Ex. P-1, the partition deed was a forged document. However, both the Courts below did not find any weight in the submission made by the appellants/defendants. The suit was contested merely by Draupdi Devi and Rajpal as they only filed written statement. Satpal and Jas Raj did not file written statement and further did not lead any evidence as well. The other reason before the Courts below for accepting the prayer made by the respondents/plaintiffs was that all four sisters of deceased Kewal Krishan also supported the family partition recorded in 1981.

Learned counsel for the appellants submits that these were not the only properties as Kewal Krishan had been given other property and accordingly, this property remained as joint property. However, he could not refer to any material on record to show that family owned any other property, which was partitioned and due share was given to deceased Kewal Krishan. Mere technical plea of registration etc. will not be sufficient to accept the plea raised by the appellants as opined by Hon'ble the Supreme Court in **Amteshwar Anand Vs. Virender Mohan Singh and others 2005 (4) Recent Civil Reports (Civil) 485** wherein it was held that in case of transactions between the members of same family for their mutual benefit, the Courts lean in favour of upholding a family arrangement in stead of disturbing the same on technical or trivial grounds particularly when the parties have mutually received benefits under the arrangements.

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In the present case also, it is concurrently found that parties have taken the benefit of the family arrangement Ex. P-1 and merely on technical pleas, they cannot be permitted to back out.

Accordingly, I do not find any substantial question of law arises in the present appeal and the same is dismissed.

December 06, 2007 **(Rajesh Bindal)**
Pka **Judge**

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